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9  
10 IN THE UNITED STATES BANKRUPTCY COURT  
11 IN AND FOR THE DISTRICT OF ARIZONA

12  
13 In re: ) In Proceeding Under  
14 MARIANNE TANTILLO, ) Chapter 13  
15 ) Case No.: 2:09-bk-10666-SSC  
16 Debtor(s). ) Adv. No.: 2:09-ap-01169-SSC  
17 ) STIPULATION REGARDING AVOIDANCE  
18 ) OF LIEN  
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13 MARIANNE TANTILLO,  
14 Plaintiff.  
15 v.  
16 COUNTRYWIDE HOME LOANS, INC., its  
17 assignees and/or successors in interest; BAC  
18 HOME LOAN SERVICING, L.P., its  
19 assignees and/or successors in interest; BANK  
20 OF AMERICA, N.A.; and MORTGAGE  
ELECTRONIC REGISTRATION SYSTEMS,  
21 Defendants.

22 This Stipulation is entered into by and between MARIANNE TANTILLO (hereinafter  
23 referred to as "Debtor"), by and through her attorney of record, Nathan J. Brelsford; and  
24 Defendant BAC HOME LOAN SERVICING, L.P., its assignees and/or successors in interest,  
25 (hereinafter referred to as "Creditor"), by and through its authorized agent, Michelle Reinhard.

26 RECITALS  
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1           A. Debtor is the maker of a residential mortgage note, which is secured by a Junior  
2 Deed of Trust encumbering the real property located at 2801 N. Litchfield Rd. Unit 83,  
3 Goodyear, Arizona 85395 (the "Subject Property") with a legal description as follows:

4           LOT 83, OF THE PYRAMIDS AT PALM VALLEY  
5 CONDOMINIUMS, ACCORDING TO THE PLAT OF  
6 RECORD IN THE OFFICE OF THE COUNTY RECORDER  
7 OF MARICOPA COUNTY, ARIZONA, RECORDED IN  
BOOK 428 OF MAPS, PAGE 43 AND AMENDED IN BOOK  
713 OF MAPS, PAGE 42.

8           The Note and Deed of Trust are collectively referred to hereinafter as the "Subject Loan."

9           B. Creditor is the holder and owner of the Subject Loan and/or is the authorized  
10 agent of the owner of the Subject Loan and is authorized and has represented itself to Debtor as  
11 being authorized to enter into this stipulation.

12           C. On or about May 18, 2009, Debtor filed a voluntary petition under Chapter 13 of  
13 the Bankruptcy Code in the United States Bankruptcy for the District of Arizona - Phoenix  
14 Division, and was assigned Case No. 2:09-10666-SSC.

15           D. On or about September 9, 2009, Debtor filed an Adversary Complaint against  
16 Creditor praying that the Court find Creditor's Deed of Trust encumbering the Subject Property  
17 be avoided and that its claim be paid as an unsecured.

18 **THE PARTIES HEREBY STIPULATE AND AGREE TO THE ENTRY OF A FINAL  
19 ORDER WHICH PROVIDES AS FOLLOWS:**

20           1. Creditor's claim shall be treated, classified and allowed as a non-priority general  
21 unsecured claim in the Debtors' Chapter 13, SUBJECT TO THE FOLLOWING CONDITIONS:

22           A. The avoidance of Creditor's Junior Deed of Trust is contingent upon the  
23 confirmation of the Debtors' Chapter 13 plan;

24           B. The avoidance of Creditor's Junior Deed of Trust is contingent upon the  
25 Debtors' completion of their Chapter 13 plan; and

26           C. The avoidance of Creditor's Junior Deed of Trust is contingent upon the  
27 Debtors' receipt of a Chapter 13 discharge.

1       2. Upon receipt of the Debtors' Chapter 13 discharge and completion of their  
2 Chapter 13 Plan, Creditor shall, after receipt of notice of said discharge, promptly record a  
3 reconveyance of its junior position deed of trust against the Subject Property with the Maricopa  
4 County Recorder's Office;

5       3. Creditor shall retain its lien for the full amount due under the Subject Loan, and  
6 Creditor's lien shall not be avoided, and Creditor's claim shall be treated as a secured claim, in  
7 the event of either the dismissal of the Debtors' Chapter 13 case or the conversion of the Debtors'  
8 Chapter 13 case to any other Chapter under the United States Bankruptcy Code;

9       4. In the event that Debtor refinances the loan(s) on the Subject Property or sell the  
10 Subject Property prior to the completion of the Chapter 13 case and receipt of a Chapter 13  
11 discharge order, then Creditor will be paid in full at closing unless a lesser amount is agreed  
12 upon by the parties

13       5. In the event that the holder of the first lien on the Subject Property forecloses on  
14 its security interest and extinguishes Creditor's Junior Deed of Trust prior to the Debtors'  
15 completion of their Chapter 13 Plan and receipt of a Chapter 13 discharge, Creditor's lien shall  
16 attach to the surplus proceeds of the foreclosure sale for the full amount of the Subject Loan  
17 balance at the time of the sale; and

18       6. Each party shall bear their own attorneys' fees and costs incurred in the present  
19 adversary case number 2:09-ap-01169-SSC and bankruptcy case number 2:09-bk-10666-SSC.

20       7. The terms of this stipulation will be incorporated by reference in an order  
21 confirming the Chapter 13 Plan in bankruptcy case number 2:09-bk-10666-SSC.

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1 IT IS SO STIPULATED:

2 Dated: 10-13-09

3 By:   
4 NATHAN J. BRELSFORD  
5 2633 E Indian School Road, Ste. 460  
6 Phoenix, AZ 85016  
7 Attorney for Marianne Tantillo

8 Dated: 10-13-09

9 By:   
10 MICHELLE REINHARD  
11 BAC Home Loan Servicing, LP  
12 1757 Tapo Canyon Road  
13 Mail Stop: CA6-913-LB-11  
14 Simi Valley, CA 93063  
15 Authorized Agent for Creditor

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